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ABSTRACT

This document provides answers to questions frequently asked by parents and practitioners about the mandates and requirements of the Individuals with Disabilities Education Act Amendments of 1997 (IDEA). The 29 questions are organized into six sections: (1) background information on the IDEA (history of IDEA, and obtaining copies of IDEA and specific state laws); (2) purposes of the IDEA (meanings of such concepts as "free appropriate public education," eligibility for services, special education, and related services); (3) accessing services under IDEA (the student evaluation process); (4) the Individualized Education Program (IEP development, parent involvement, student placement); (5) procedural safeguards (the parent's rights in challenging the school district's decisions) and (6) resources (legal resources, resources available from the National Information Center for Children and Youth with Disabilities, and references). An attachment presents the full text of IDEA's definition of a "child with a disability." (DB)

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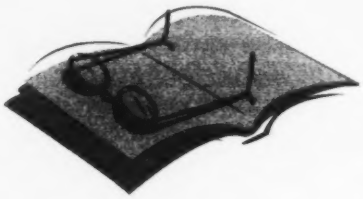
Questions and Answers about IDEA



Each year, the National Information Center for Children and Youth with Disabilities (NICHCY) receives thousands of requests from families and professionals for information about special education and related services for children and youth with disabilities. This *News Digest* has been developed to answer many of the questions and concerns that families and professionals have when they contact NICHCY. This document looks specifically at the mandates and requirements of the Individuals with Disabilities Education Act Amendments of 1997 (IDEA). The IDEA is the federal law that supports special education and related services programming for children and youth with disabilities.

While this issue often uses the word "you" to speak directly to parents and families, we hope that its detailed information about special education law and services is also useful to professionals who work with children and youth with disabilities and their families.

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Part I. Background Information on the IDEA

Brief History of the IDEA

The federal law that supports special education and related service programming for children and youth with disabilities is called the Individuals with Disabilities Education Act (IDEA), [formerly the Education for the Handicapped Act (EHA)]. The IDEA has its roots in Public Law 94-142 (the Education of All Handicapped Children Act), which was originally enacted in 1975 to establish grants to States for the education of children with disabilities. This law has been amended several times. Under Part B of the law, all eligible school-aged children and youth with disabilities are entitled to receive a free appropriate public education (FAPE).

In 1986, the EHA was amended by P.L. 99-457 to provide special funding incentives for States that would make FAPE available for all eligible preschool-aged children with disabilities ages three through five. Provisions were also included to help States develop early intervention programs for infants and toddlers with disabilities; this part of the legislation became known as the Part H Program.

The EHA was amended again in 1990 by P.L. 101-476, which, among other things, changed the name of the legislation to the Individuals with Disabilities Education Act, or IDEA. The IDEA was first amended in 1992 by P.L. 102-119. The newest amendments to this law are the Individuals with Disabilities Education Act Amendments of 1997 (P.L. 105-17). These amendments restructure IDEA into four parts: Part A addresses General Provisions; Part B covers the Assistance for Education of All Children with Disabilities; Part C covers Infants and Toddlers with Disabilities; and Part D addresses National Activities to Improve the Education of Children with Disabilities.

The IDEA is an important federal law, because it requires that FAPE, which includes special education and related services, be made available to children and youth with disabilities in mandated age ranges. This *News Digest* provides a general overview of the IDEA and its regulations as they relate to school-aged children. The *News Digest* is intended to help you understand the law and how it mandates services for your school-aged child with a disability. Information about services available to infants and toddlers through the Part C program (formerly known as the Part H program) and to preschool children with disabilities is presented in a separate NICHCY document entitled *A Parent's Guide: Accessing Programs for Infants, Toddlers, and Preschoolers With Disabilities.*

The information provided in this *News Digest* is drawn specifically from the IDEA Amendments of 1997, as passed by Congress in 1997 and codified into law under 20 United States Code (USC), Chapter 33. Final regulations for the IDEA Amendments of 1997 were published in the *Federal Register* on Friday, March 12, 1999. These final regulations are currently guiding school systems in how they design and implement their special education and related services programs.

Obtaining a Copy of IDEA and Its Regulations

Because States base their programs upon the law and its final Federal regulations, it is helpful for you to read and become familiar with the law itself. To obtain a copy of the law (called the statute) and/or the final Federal regulations, contact: Superintendent of Documents, U.S. Government Printing Office, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250-7954. Charge orders may be telephoned to: (202) 512-1800. *For a copy of the statute,* state that you are requesting a copy of Public Law 105-17, the Individuals with Disabilities Education Act Amendments of 1997. *To obtain a copy of the final Federal regulations,* request the latest copy of the IDEA's regulations: Code of Federal Regulations: Title 34; Education; Part 300-399. There will be a minimal charge for both of these documents.

Both of these documents are also available on the Internet at the Web site of the Office of Special Education Programs (OSEP) at the U.S. Department of Education. OSEP's Web address is:

www.ed.gov/offices/OSERS/IDEA/index.html

Another useful Web site for obtaining these materials is the OSEP-funded IDEA Partnership Projects at:

www.ideapractices.org/lawandregs.htm

§ Special Symbols in This Issue §

As you read the explanations about the law below, you will find references to specific sections of the Federal regulations, such as §300.1. You can use these references to locate the precise sections in the Federal regulations that address the issue being discussed. For example, in the discussion of the IDEA's purposes, you are given the reference §300.1. This reference tells you that, if you wanted to read the exact words the regulations use to define the IDEA's purposes, you would look under Section 300.1 of the *Code of Federal Regulations* (CFR) for Title 34 (sometimes referred to as 34 CFR).

Obtaining a Copy of Your State's Special Education Law

It is also important to become familiar with your State special education law. The IDEA is a Federal law and, as such, provides minimum requirements that States must meet in order to receive Federal funds to assist in providing special education and related services. Your State law and regulations may go beyond the Federal requirements, and it is important to know their specifics. You may want to contact your State Department of Education, Office of Special Education, and ask for a parent handbook on special education.

Using the Term "Public Agency"

In this *News Digest*, you will read a great deal about the responsibilities and rights of the agency that is responsible for providing education to your child with a disability. The term that is used in IDEA's regulations is generally *public agency*.

The "public agency" may vary from location to location and from child to child. In some instances, it is the State Education Agency (SEA); in others, it is the local education agency (LEA), a public charter school, or some other entity.

Although *public agency* is not a term most people are overly familiar with, we have chosen to use this term to refer to the agency in your area that is responsible for providing education to children with disabilities. In most cases, this agency will be your local school district.

Part II: Purposes of the IDEA: Who is Eligible? What Types of Services are Provided?

1. What are the purposes of the IDEA?

The major purposes of the IDEA are:

- to ensure that all children with disabilities have available to them a "free appropriate public education" that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living;
- to ensure that the rights of children and youth with disabilities and their parents are protected;
- to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities; and
- to assess and ensure the effectiveness of efforts to educate children with disabilities. (§300.1)

2. What is a free appropriate public education?

Under the law, a free appropriate public education (FAPE) means special education and related services that:

- are provided to children and youth with disabilities at public expense, under public supervision and direction, and without charge;
- meet the standards of the State Education Agency (SEA), including the requirements of the IDEA;
- include preschool, elementary school, or secondary school education in the State involved; and
- are provided in keeping with an individualized education program (IEP) that meets the requirements of law, as specified in §§300.340-300.350. (§300.13)

The requirements for an IEP are discussed in greater detail in Part IV of this document.

3. Who is eligible for services under the IDEA?

The regulations for IDEA define a "child with a disability" as including a child (a) who has been evaluated according to IDEA's evaluation requirements (specified at §§300.530 - 300.536 and discussed in Part III of this document); (b) who has been determined, through this evaluation, to have one or more of the disabilities listed below; *and* (c) who, because of the disability, needs special education and related services. The disabilities listed by IDEA are:

- mental retardation;
- a hearing impairment, including deafness;
- a speech or language impairment;
- a visual impairment, including blindness;
- serious emotional disturbance (hereafter referred to as emotional disturbance);
- an orthopedic impairment;

- autism;
- traumatic brain injury;
- other health impairment;
- a specific learning disability;
- deaf-blindness; or
- multiple disabilities. [§300.7 (a)(1)]

Attachment A of this *News Digest* provides the complete description of each of these disabilities, as contained in the regulations for IDEA.

For children aged 3 through 9, a "child with a disability" may include, at the discretion of the State and the local educational agency (LEA) and subject to certain conditions (enumerated at §300.313), a child who is experiencing *developmental delays*, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:

- physical development;
- cognitive development;
- communication development;
- social or emotional development; or
- adaptive development; *and*
- who needs, for that reason, special education and related services. [§300.7(b)]

From birth through age 2, children may be eligible for services through The Infants and Toddlers with Disabilities Program (Part C) of the IDEA. This *News Digest* does not discuss the Part C program. For information about how to access services for infants and toddlers, contact NICHCY and request a copy of *A Parent's Guide: Accessing Programs for Infants, Toddlers, and Preschoolers with Disabilities*.

Special education is defined as instruction that is specially designed, at no cost to you as parents, to meet your child's unique needs.

4. What is special education?

Special education is defined as instruction that is specially designed, at no cost to you as parents, to meet your child's unique needs. Specially designed instruction means adapting the content, methodology, or delivery of instruction:

- to address the unique needs of your child that result from his or her disability, and
- to ensure your child's access to the general curriculum so that he or she can meet the educational standards that apply to all children within the jurisdiction of the public agency.

Special education can include instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. It can include instruction in physical education as well. Speech-language pathology services or any other related service can be considered special education rather than a related service under State standards if the instruction is specially designed, at no cost to the parents, to meet the unique needs of a child with a disability. Travel training and vocational education also can be considered special education if these standards are met. (§300.26)

5. Where is special education instruction provided?

As listed above, special education instruction can be provided in a number of settings, such as: in the classroom, in the home, in hospitals and institutions, and in other settings (§300.26). Public agencies must ensure that a continuum of alternative placements is available to meet the needs of children with disabilities [§300.551(a)]. This continuum must include the placements just mentioned (instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions) and make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. Unless a child's IEP requires some other arrangement, the child must be educated in the school he or she would attend if he or she did not have a disability [§300.552(c)].

Special education instruction must be provided to students with disabilities in what is known as the *least restrictive environment*, or LRE. Both the IDEA and its regulations have provisions that ensure that children with disabilities are educated with nondisabled children, to the maximum extent appropriate. The IDEA's LRE requirements apply to students in public or private institutions or other care facilities [§300.550(b)(1)]. Each State must further ensure that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily [§300.550(b)(2)].

6. What are related services?

Related services are defined in the regulations as transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education. Related services may include:

- speech-language pathology and audiology;
- psychological services;
- physical therapy and occupational therapy;
- recreation, including therapeutic recreation;
- early identification and assessment of disabilities in children;

- counseling services, including rehabilitation counseling;
- orientation and mobility services;
- medical services for diagnostic or evaluation purposes only;
- school health services;
- social work services in schools; and
- parent counseling and training. (§300.24)

The list of related services identified in the IDEA's regulations is not intended to be exhaustive and could include other developmental, corrective, or support services if they are required to assist a child with a disability to benefit from special education.

You should inform yourself fully about the related services that are listed (and described in some detail) in the regulations. NICHCY's *News Digest* called *Related Services for School-Aged Children* can also provide information and guidance about related services.

Part III. Accessing Services

7. What is the first step in obtaining special education and related services?

Before a child with a disability can receive special education and related services for the first time, a full and individual initial evaluation of the child, also known as a preplacement evaluation, must be conducted (§300.531). Informed parent consent must be obtained before this evaluation may be conducted [§300.505(a)(1)(i)].

8. How do I receive an evaluation of my child?

There are at least two ways in which your child may be selected to receive an evaluation:

(1) *You may request that your child be evaluated.* You can call or write to your child's teacher, the principal of your child's school, or the Director of Special Education in your school district. If the public agency suspects that your child has a disability, your child must be evaluated at no cost to you.

If the public agency refuses to evaluate your child because it does not believe that your child has a disability, you must be given a written notice of the refusal and a full explanation of the reasons for the refusal [§§300.503(a)(1)(ii) and 300.503(b)(1) and (2)]. This notice must also include a statement telling you that you have protection under IDEA's regulations. In addition, at the time of initial referral for evaluation, you must be given a procedural safeguards notice that includes, among other elements, the State complaint procedures and a full explanation of all the procedural safeguards available under IDEA, including your right to challenge the public agency's refusal through a due process hearing (§300.507) and your right to request mediation (§300.506).

(2) *The public agency may ask to evaluate your child.* Based on a teacher's recommendation, or observations or results from tests given to all children in a particular grade, a public agency may recommend that a child receive further screening or assessment to determine if he or she has a disability and needs special education and related services. If the public agency thinks that your child may have a disability and needs special education and related services, it must evaluate your child at no cost to you. You, as a parent, must give informed written permission before the public agency can evaluate your child [§300.505(a)(1)(i)].

It is important for you to know that the law requires that the public agency notify you, the parents, *in writing* before it evaluates your child. All written communication from the public agency must be in a form the public can understand (and provided in your native language if you do not read English, or in the mode of

communication you normally use, such as Braille or large print), unless it is clearly not feasible to do so. If your native language or other mode of communication is not a written language, the public agency must take steps to ensure:

- that the notice is translated orally (or by other means) to you in your native language or other mode of communication, and
- that you understand the content of the notice [§300.503(c)(2)].

The notice must also:

- state the action that is proposed or refused;
- the reasons for the proposal or refusal;
- a description of any other options considered by the agency and why they were rejected;
- a description of each evaluation procedure, test, record, or report used as a basis for the proposed or refused action;
- a description of any other factors relevant to the proposal or refusal;
- a statement that, as the parents of a child with a disability, you have protections under the procedural safeguards of the law and the means by which you can obtain a full explanation of those protections and State complaint procedures; and
- sources you can contact to obtain assistance in understanding the provisions of IDEA. [§300.503(b)(7)]

As was stated above, you, as parents, must give your informed written consent before the public agency may conduct an initial evaluation of your child. If you refuse consent for an initial evaluation, the public agency may continue to pursue conducting the evaluation by using

the law's due process procedures or its mediation procedures (discussed in Part V of this *News Digest*), unless doing so would be inconsistent with State law relating to parental consent [§300.505(b)].

9. What does the evaluation process involve?

The regulations are very specific about how public agencies are to conduct evaluations of children and youth thought to have a disability. Your child's evaluation must be conducted by a group that includes:

- you, as parents;
- at least one regular education teacher of your son or daughter if he or she is, or may be, participating in the regular education environment;
- at least one of your child's special education teachers or special education providers;
- a representative of the public agency who is qualified to provide or supervise the provision of special education and who knows about the general curriculum (i.e., the curriculum used by nondisabled students), and about available resources;
- an individual who can interpret the instructional implications of the evaluation results;
- other individuals (invited at your discretion or the discretion of the public agency) who have special knowledge or expertise regarding your child;
- representatives from any other agency that may be responsible for paying for or providing transition services (if your child is 16 years old or, if appropriate, younger and will be planning for life after high school);
- your son or daughter, if appropriate (if transition services needs and/or transition services will be considered, the student *must* be invited to be part of the evaluation group); and
- other qualified professionals, as appropriate. (§300.533)

In this latter category—"other qualified professionals"—a wide range of individuals may be involved, depending upon the suspected disability of your child. For example, any of the following may be part of the evaluation team: school psychologist, speech-language pathologist, remedial reading teacher, occupational or physical therapist, adaptive physical education therapist, educational diagnosticians, or others.

The law requires that your child be assessed in all areas related to his or her suspected disability. This includes, where appropriate, evaluating your child's:

- health,
- vision,
- hearing,
- social and emotional status,
- general intelligence,
- academic performance,
- communicative status, and
- motor abilities. [§300.532(g)]

To accomplish this, a variety of assessment tools and strategies must be used to gather relevant functional and developmental information about your child. This includes information provided by you, as well as information related to enabling

your child to be involved in and progress in the general curriculum (that is, the curriculum used with nondisabled children). The ultimate purpose of the initial evaluation is to gather information that may assist in determining:

- whether or not your child is a "child with a disability" (see discussion above under Question #3), and
- the content of your child's IEP, if he or she is found eligible for special education and related services. [§300.532(b)]

To this end, then, the evaluation must be sufficiently comprehensive to identify all of your son or daughter's special education and related services needs, whether or not those needs are commonly linked to the disability category in which he or she is thought to have a disability [§300.532(h)].

The evaluation process, as described within IDEA, requires that the group of individuals listed above begin the evaluation by reviewing existing evaluation data on your child. This includes evaluations and information provided by you; current classroom-based assessments and observations; and observations by teachers and related services providers. (Your permission is not needed for this review.)

Based on that review and on input from you as the child's parents, the group then identifies what additional data (if any) are needed to determine:

- whether your son or daughter has a particular category of disability (e.g., "other health impairment," "specific learning disability");
- your child's present levels of performance (that is, how he or she is currently doing in school) and his or her educational needs;
- whether your child needs special education and related services; and

The law requires that your child be assessed in all areas related to his or her suspected disability.

- if so, whether any additions or modifications would need to be made in the special education and related services to enable your child to meet the goals set out in the IEP to be developed and to participate, as appropriate, in the general curriculum. [§300.533(a)]

For an initial evaluation, it is likely that additional data will be needed to answer these questions, particularly given the law's requirement to evaluate your child in all areas related to the suspected disability. The public agency must administer tests and other evaluation materials as may be needed to collect the needed data. Before the agency may collect this information about your child, it will need to ask you for your informed written permission [§300.505(a)(1)]. As was stated above, if you refuse consent, the public agency may continue to pursue conducting the evaluation by using the law's due process procedures or its mediation procedures (discussed in Part V of this *News Digest*), unless doing so would be inconsistent with State law relating to parental consent [§300.505(b)]. If you give your informed written consent to the evaluation, then the public agency will go ahead and collect the needed information about your child.

In addition to the requirements stated above, the IDEA includes a number of general evaluation provisions that are intended to ensure that evaluations of children provide information that is comprehensive and accurate about their strengths and needs. With respect to your child (and all children), this includes the following:

1. No single procedure may be used as the sole criterion for determining whether your child is a "child with a disability" and for determining an appropriate educational program for your child.

2. Tests and other evaluation materials must be selected and administered so as not to be discriminatory on a racial or cultural basis.

3. Tests and other evaluation materials must be provided and administered in your child's native language or other mode of communication, unless it is clearly not feasible to do so.

4. If your child has limited English proficiency, materials and procedures used to assess your child must be selected and administered to ensure that they measure the extent to which your child has a disability and needs special education, rather than measuring your child's English language skills.

These last three provisions of the law are meant to protect children of different racial, cultural, or language backgrounds from misdiagnosis. For example, children's cultural backgrounds may affect their behavior or test responses in ways that teachers or other personnel do not understand. Similarly, if a child speaks a language other than English or has limited English proficiency, he or she may not understand directions or words on tests and may be unable to answer correctly. As a result, a child may mistakenly appear to be a slow learner or to have a hearing or communication problem.

5. Any standardized tests that are given to your son or daughter must be validated for the specific purpose for which they are used. They must also be administered by trained and knowledgeable personnel according to the instructions provided by the producers of the tests.

6. If an assessment is not conducted under standard conditions—meaning that some condition of the test has been changed (such as the qualifications of the person giving the test or the method of giving the test)—a description of the extent to which it varied from standard conditions must be included in the evaluation report.

7. The evaluation must include tests and other evaluation materials tailored to assess your child's specific areas of educational need and not merely include those that are designed to provide a single general intelligence quotient (your child's IQ score).

8. If your child has impaired sensory, manual, or speaking skills, the law requires that tests are selected and administered so as best to ensure that test results accurately reflect his or her aptitude or achievement level (or whatever other factors the test claims to measure), and *not* merely reflect your child's impaired sensory, manual, or speaking skills (unless the test being used is intended to measure those skills).

9. The public agency must use assessment tools and strategies that provide relevant information that directly assists persons in determining your child's educational needs. (§300.532)

Thus, the evaluation process begins when a group of individuals, including you as parents, reviews existing evaluation data on your child and decides what (if any) additional data are needed to decide if your child has a disability and to help plan instruction for your child. If more information is needed about your child to

make these decisions, the public agency will ask your permission to collect the information. After you give your informed written consent, the public agency will collect whatever additional information is needed, following the guidelines listed above for sound evaluation and using a variety of evaluation methods and strategies, including tests, observations, and classroom-based assessments. An evaluation report will then be prepared. Such a report generally would summarize the results of your child's evaluation.

10. How are the evaluation results used?

Upon completing the administration of tests and other evaluation materials (if they are determined to be needed), a group of qualified professionals and you, the parents, must determine whether or not your child is a "child with a disability," as defined by IDEA (see Attachment A in this document) and local policy, and whether your child needs (and, thus, is eligible for) special education and related services (§300.534). This determination will be made based on the results of your child's evaluation and information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, and your child's physical condition, social or cultural background, and adaptive behavior [§300.535(a)(1)].

Previously, parents were not expressly included in the group that determined their child's eligibility and, in fact, were often excluded. Now, under the IDEA Amendments of 1997, parents are to be part of the group that determines their child's eligibility [§300.534(a)(1)]. The public agency must also provide a copy of the evaluation report to the parent, as well as the documentation of the determination of the child's eligibility [§300.534(a)(2)].

Some school systems will hold a meeting where they consider only the eligibility of the child for special education and related services. At this meeting, your child's assessment results should be explained. The specialists who assessed your child will explain what they did, why they used the tests they did, your child's results on those tests or other evaluation procedures, and what your child's scores mean when compared to other children of the same age and grade.

It is important to know that the group may not determine that a child is eligible if the determinant factor for making that judgment is the child's lack of instruction in reading or math or the child's limited English proficiency. The child must otherwise meet the law's definition of a "child with a disability"—meaning that he or she has one of the disabilities listed in the law (see Attachment A) and, because of that disability, needs special education and related services. [§300.534(b)]

The regulations also specify criteria for determining the existence of a specific learning disability, one of the 13 disability categories listed in the law. Section 300.541 states that a team may determine that a child has a specific learning disability if two conditions are met. The first is that the child does not achieve commensurate with his or her age and ability levels in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading comprehension, mathematics calculation, or mathematic reasoning, even if the child is provided with learning experiences appropriate for his or her age and ability level. The second condition is that the team finds that a child has a severe discrepancy between achieve-

ment and intellectual ability in one or more of those areas. However, the team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achivement is primarily the result of (a) a visual, hearing, or motor impairment; (b) mental retardation; (c) emotional disturbance; or (d) environmental, cultural, or economic disadvantage. (§300.541)

If the evaluation results indicate that your child meets the definition of one or more of the disabilities listed under IDEA and needs special education and related services, the results will form the basis for developing your child's IEP. The IEP is discussed in detail in the next section of this *News Digest*.

11. What happens if I don't agree with the evaluation results?

If you, as parents of a child with a disability, disagree with the results of your child's evaluation as obtained by the public agency, you have the right to obtain what is known as an Independent Educational Evaluation, or IEE (§300.502). An IEE means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of your child. If you ask for an IEE, the public agency must provide you with, among other things, information about where an IEE may be obtained.

Who pays for the independent evaluation? The answer is that some IEEs are at public expense and others are paid for by the parents. For example, if you are the parent of a child with a disability and you disagree with the public agency's evaluation, you may request an IEE at public expense. "At public expense" means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you as parents [§300.502(a)(3)(ii)]. The public agency may grant your request and pay for the IEE, or it may initiate a hearing to show that its own evaluation was appropriate. The public agency may ask why you object to the public evaluation. However, the agency may not require you to explain, and it may not unreasonably delay either providing the IEE at public expense or initiating a due process hearing to defend the public evaluation. [§300.502(b)(4)]

If the public agency initiates a hearing and the final decision of the hearing officer is that the agency's evaluation was appropriate, then you still have the right to an IEE but not at public expense [§300.502(b)(3)]. As part of a due process hearing, a hearing officer may also request an IEE; if so, that IEE must be at public expense. Whenever an IEE is publicly funded, that IEE must meet the same criteria that the public agency uses when it initiates an evaluation. The public agency must tell you what these criteria are—such as location of the evaluation and the qualifications of the examiner—and they must be the same criteria the public agency uses when it initiates an evaluation, to the extent they are consistent with your right to an IEE. However, the public agency may not impose other conditions or timelines related to your obtaining an IEE at public expense. [§300.502(e)]

Of course, you have the right to have your child independently evaluated at any time at your own expense. (Note: When the same tests are repeated within a short time period, the validity of the results can be seriously weakened.) The results of this evaluation must be considered by the public agency, if it meets agency criteria, in any decision made with respect to providing your child with FAPE. The results may also be presented as evidence at a hearing regarding your child. [§300.502(c)] For more information about hearings, see Part V of this *News Digest*.

Under IDEA '97, parents are to be part of the group that determines a child's eligibility.

12. Will my child be evaluated again in the future?

In most cases, yes. The first time your child is evaluated is called an initial evaluation (§300.531). Evaluations must also be conducted at least every three years (generally called a triennial evaluation) after your child has been placed in special education [§300.536(b)]. Reevaluations can also occur more frequently if conditions warrant, or if you or your child's teacher request(s) a reevaluation [§300.536(b)]. Informed parental consent is also necessary for reevaluations [§300.505(a)(1)(i)].

As with initial evaluations, reevaluations begin with the review of existing evaluation data, including evaluations and information provided by you, the child's parents. Your consent is not required for the review of existing data on your child. On the basis of that review, the group, including you and other qualified professionals (as appropriate), must identify what additional data, if any, are needed to determine whether your child continues to be a "child with a disability" and continues to need special education and related services. If the group determines that additional data are needed, then the public agency must administer tests and other evaluation materials as needed to produce the data. Prior to collecting this additional information,

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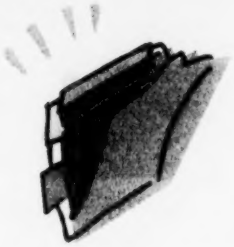
the agency must obtain your informed written consent.

If the group determines that no additional data are needed to determine whether your child continues to be a "child with a disability," the public agency must notify you:

- of this determination and the reasons for it; and
- of your right, as parents, to request an assessment to determine whether, for the purposes of services under IDEA, your child



continues to be a "child with a disability."

The public agency is not required to conduct the assessment unless requested to do so by you, the child's parents. [§300.533(d)]

A final note with respect to reevaluations: Before determining that your child is no longer a "child with a disability" and, thus, no longer eligible for special education services under IDEA, the public agency must evaluate your child in accordance with all of the provisions described above. This evaluation, however, is not required before terminating your child's eligibility due to graduation with a regular high school diploma or due to exceeding the age eligibility for FAPE under State law. [§300.534(c)]

Part IV. The Individualized Education Program

13. What is an Individualized Education Program (IEP)?

An IEP is a written statement for a child with a disability that is developed, reviewed, and revised in a meeting in accordance with certain requirements of law and regulations. These requirements and the entire IEP process are discussed in this section.

Two general purposes of the IEP are (1) to establish measurable annual goals, including benchmarks or short-term objectives, for the child; and (2) to state the special education and related services and supplementary aids and services that the public agency will provide to, or on behalf of, the child. The regulations state that the State Education Agency (SEA) must ensure that each public agency develops and implements an IEP for each child with a disability served by that agency (§300.341).

Under the IDEA, your child's IEP must include:

- A statement of your child's *present levels of educational performance*, including how your child's disability affects his or her involvement and progress in the general curriculum (i.e., the same curriculum as for nondisabled children). This may include information concerning your son or daughter's: academic achievement, social adaptation and how your child's behavior impedes his or her learning or that of others, vocational skills, sensory and motor skills, self-help skills, language and communication needs, and speech and language skills;
- A statement of *measurable annual goals*, including *benchmarks* (major milestones) *or short-term objectives* (individual, intermediate steps that make up the annual goals). These goals and objectives must relate to (a) meeting your child's needs that result from his or her disability to enable your child to be involved in and progress in the general curriculum, and (b) meeting each of your son or daughter's other educational needs that result from his or her disability;
- A statement of the *special education and related services* and *supplementary aids and services* to be provided to your child, or on behalf of your child, and a statement of the *program modifications or supports for school personnel* that will be provided for your child to advance toward attaining the annual goals; to be involved and progress in the general curriculum and participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children in these activities;
- An *explanation of the extent*, if any, to which your son or daughter will not be participating with nondisabled children in a regular class, in the general curriculum, and in extracurricular and other nonacademic activities;
- A statement of any *individual modifications in the administration of State or district-wide assessments of student achievement* that are needed for your child to participate in the assessment. If your child will not take part in a particular State- or district-wide assessment, a statement must also be included as to why that assessment is not appropriate for your child and how he or she will be assessed.
- A statement of *when* services and modifications are expected to begin, *how frequently* they will be provided, *how long* they will go on, and *where* they will be provided;

- A statement of how your child's progress toward the annual goals will be measured, and how you as parents will be regularly informed (through such means as report cards) of your child's progress toward the annual goals, and the extent to which that progress is sufficient to enable your child to achieve the goals by the end of the year. This regular report must occur at least as often as parents are informed of their nondisabled children's progress;

- A statement of the *transition service needs* of your child, beginning at age 14 (or younger, if determined appropriate by the IEP team) and updated annually. This statement would appear under the applicable components of your child's IEP that focuses on his or her courses of study, such as participation in advanced-placement courses or a vocational education program;

- A statement of *needed transition services* for your child, beginning at age 16 (or younger, if determined appropriate by the IEP team), including, if appropriate, a statement of the interagency responsibilities or any needed linkages; and

- A statement regarding *transfer of rights at age of majority*, as appropriate. If you live in a State that transfers rights at the age of majority, your child's IEP must include a statement that he or she has been informed of the rights under Part B of IDEA (if any) that will transfer to him or her on reaching the age of majority. If you live in such a State, this statement must be included in the IEP beginning at least one year before your child reaches the age of majority under State law.

These last three statements relate to the transition needs of students as they approach the age where they will leave high school and move on to the adult world of employment, further education, and independent living. Beginning in 1990, the IDEA included transition planning as part of the IEP in order to address the need of students with disabilities to prepare for life after high school. Because transition is such a crucial area for youth with disabilities, more will be said about it under Question #17 below.

In addition to including the above statements in the IEP, the IEP team must also consider *"special factors"* with respect to the child. New to the IEP process with the passage of the IDEA Amendments of 1997, these factors include the following:

- *In the case of a child whose behavior impedes his or her learning or that of others:* The IEP team must consider, if appropriate, strategies that address the behavior, including positive behavioral interventions, strategies, and supports.

- *In the case of a child with limited English proficiency*: The IEP team must consider the language needs of the child as those needs relate to his or her IEP.

- *In the case of a child who is blind or visually impaired:* The IEP team must provide for instruction in Braille and the use of Braille, unless it determines that instruction in Braille or the use of Braille is not appropriate for the child. The IEP team makes this determination *after* an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille.

- *For all children:* The IEP team must consider the communication needs of the child

- *In the case of a child who is deaf or hard of hearing:* The IEP team must consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.

- *For all children:* The IEP team must consider whether the child requires assistive technology devices and services. (More will be said about assistive technology devices and services in Question #18 below.) [§300.346(a)(2)]

If, in considering these special factors with respect to your child, the IEP team determines that he or she needs a particular device or service (including an intervention, accommodation, or other program modification) in order to receive FAPE, then the IEP team must include a statement to that effect in your child's IEP [§300.346(c)].

Appendix A of the regulations for IDEA contains additional guidance on the IEP process. Using a question and answer format, Appendix A can assist the team developing your child's IEP. NICHCY makes Appendix A available in its entirety as its publication entitled "Individualized Education Programs." You can obtain this document by contacting NICHCY or by visiting our Web site (www.nichcy.org) and downloading it.

14. Who develops the IEP?

The IEP is developed by a team whose members meet, review the assessment information available about your child, and design an educational program to address your child's educational needs that result from his or her disability. This meeting—known by a variety of names such as an ARD meeting or an IEP meeting—must be held within 30 calendar days after it is determined, through a full and individual evaluation (described in Part III of this document), that your child has one of the disabilities listed in IDEA and needs special education and related services [§300.343(b)]. Your child's IEP must be reviewed at least annually thereafter to determine whether the annual goals are being achieved and must be revised as appropriate [§300.343(c)].

According to the regulations (§300.344), the IEP team for each child with a disability includes the following individuals:

- One or both of the child's parents;
- At least one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- At least one special education teacher of the child or, if appropriate, at least one special education provider of the child;
- A representative of the public agency who is (a) qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, (b) knowledgeable about the general curriculum, and (c) knowledgeable about the availability of resources of the public agency;

- An individual who can interpret the instructional implications of evaluation results (this person can be one of the team members mentioned above or below);
- Other individuals, at the discretion of the agency or the parents, who have knowledge or special expertise regarding the child, including related services personnel, as appropriate; and
- The child, if appropriate.

Depending on the purpose of the meeting, other participants may be involved. For example, if one of the purposes of the meeting is the consideration of transition services for the student, then the public agency must also invite the student and a representative of any other agency that is likely to be responsible for providing or paying for the transition services [§300.344(b)]. More is said about transition under Question #17.

15. So we, as parents, are involved in developing our child's IEP?

Yes. The law is very clear that you, as parents, have the right to participate in the meeting where your child's IEP is developed. This means that:

- The public agency must notify you of the meeting early enough to ensure that you have an opportunity to attend [§300.345(a)(1)].
- The public agency must attempt to schedule the meeting at a mutually agreed on time and place [§300.345(a)(2)].
- The notice given you by the agency must indicate the purpose, time, and location of the meeting.
- The notice must also identify who will attend the meeting and inform you about the participation of other individuals on the IEP team who have knowledge or special expertise about your child.
- Beginning when your child is age 14 (or younger, if appropriate), the notice must also indicate that a purpose of the meeting will be the development of a statement of your child's transition services needs and indicate that the agency will invite your child [§300.345 (b)(2)].
- Beginning when your child is age 16 (or younger, if appropriate), the notice must indicate that a purpose of the meeting is the consideration of needed transition services for your child, indicate that the agency will invite your child, and identify any other agency that will be invited to send a representative [§300.345(b)(3)].
- The agency must take whatever action is necessary to ensure that you understand the proceedings at the meeting, including arranging for an interpreter for you, if you are deaf or if your native language is other than English [§300.345(e)].

IDEA's regulations state that the public agency may hold the IEP meeting without you if it is unable to convince you that you as parents should attend. However, the agency must have a record of its attempts to arrange a mutually agreed on time and place. This can be accomplished by keeping detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to you and any responses received, and detailed records of visits made to your home or work and the results of those visits. [§300.345(d)] The regulations also

state that if neither of you as parents can attend the IEP meeting, the public agency must use other methods to ensure your participation, including individual or conference telephone calls [§300.345(c)].

16. What happens during an IEP meeting?

As has been said, the purpose of the IEP meeting is to develop a child's IEP. The meeting can serve as an excellent communication vehicle between parents and the public agency. It enables the parents and other members of the IEP team to decide what the child's educational needs are, what goals and objectives or benchmarks are appropriate, what services will be provided, and what results can be anticipated, and to specify these in the IEP.

Some public agencies conduct the IEP meeting separately from the meeting where the child's eligibility for services is determined. Other agencies combine the eligibility meeting and the IEP meeting, moving directly into developing the IEP once a child has been determined eligible for services. However, as Appendix A to the regulations points out (in Question #19), should the meeting move directly from eligibility to developing the IEP for the child and then to making a placement decision, the public agency must ensure that:

(a) it has met the law's requirements regarding eligibility decisions (as specified at §§300.534-300.535);

(b) it has met all of the Part B requirements regarding meetings to develop IEPs, including providing appropriate notification to the parents and ensuring that all the required team members participate in the development of the IEP; and

(c) the placement decision is made by the required individuals, including the parent [as specified at §§300.552 and 300.501(c)].

Whichever approach your school system uses, once your child's eligibility for services has been determined, the focus of discussion should be on developing his or her IEP. You and the other members of the team will discuss the many issues associated with developing the specific IEP statements described above, including:

- what annual goals and objectives or benchmarks are appropriate for your child;
- what special education and related services your child needs;
- which related services are necessary to ensure your child benefits from his or her special education;
- what assistive technology devices or services (if any) your child needs to benefit from special education and related services;
- what transition service needs your child has with respect to his or her courses of study (this applies to your child beginning at age 14, or younger, if determined appropriate by the IEP team); and
- what transition services are necessary to prepare your child for life after completing high school (this applies to your child beginning at age 16, or younger, if determined appropriate by the IEP team).

The law is very clear that you, as parents, have the right to participate in the meeting where your child's IEP is developed.

You, as the parent, may wish to provide information on your child's educational needs (and, when appropriate, transition needs) and offer suggestions for the services appropriate for meeting those needs. At any point during the IEP meeting, don't hesitate to ask questions until you are sure that you understand what is being said.

Following the team's discussion, decisions will be made about the educational program and related services that meet your child's needs. These decisions are then specified in the IEP. The public agency must give you a copy of the IEP at no cost to you [(§300.345(f)].

It is important to understand that the IEP sets out the individualized instruction and related services to be provided to your child, but it is not a contract. While Part B of IDEA does not require that the public agency, teachers, and others be held liable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives, the public agency *is* responsible for providing the special education and related services written into the IEP (§300.350). In order to check on your child's progress, you will find it helpful to have a copy of your child's IEP.

Your child's special education placement must be based on his or her IEP. Placement issues will be discussed further below (see Question #19), for they are a very important part of the special education process. However, first we will look at two IEP issues in more detail: transition planning and assistive technology devices and services.

17. What is required in terms of transition planning?

Beginning when your child is age 14 (or younger, if appropriate) and updated annually thereafter, your child's IEP team must include a statement in the IEP with respect to your son or daughter's *transition service needs* under the applicable components of the IEP that focuses on his or her courses of study. This might include, for example, your child's participation in advanced-placement courses or in a vocational education program. [§300.347(b)(1)] According to the Committee on Labor and Human Resources (1997), which submitted its *Report [to accompany S. 717]* to explain the IDEA Amendments of 1997, the purpose of this requirement is "to focus attention on how the child's educational program can be planned to help the child make a successful transition to his or her goals for life after secondary school" (p. 22).

Beginning when your son or daughter is 16 (or younger, if appropriate), the IEP team must include a statement in the IEP of *needed transition services* for your child. This includes, if appropriate, a statement of the interagency responsibilities or any needed linkages. [§300.347(b)(2)]

The term "transition services" means a coordinated set of activities for a student with a disability that is designed within an outcome-oriented process that promotes movement from school to post-school activities. These activities can include postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. With respect to your child, this coordinated set of activities:

- is based on your child's individual needs, taking into account his or her preferences and interests; and
- includes instruction; related services; community experience; the development of employment and other post-school adult living objectives; and, if appropriate, the acquisition of daily living skills and functional vocational evaluation. (§300.29)

Transition services can be provided as special education if they are specially designed instruction or as related services, if they are required for your child to benefit from special education [§300.29(b)].

18. What are assistive technology devices and services?

As part of developing your child's IEP, the IEP team will consider your child's need for assistive technology devices and services. *Assistive technology devices* are defined as any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capabilities of a child with a disability (§300.5). Assistive technology devices can be acquired commercially off the shelf, modified, or customized. Since the explosion of technology in our country, assistive technology devices have become more widely available and have been shown to dramatically improve the functional capabilities of a child with a disability in terms of mobility, communication, employment, and learning (Flippo, Inge, & Barcus, 1995). Many of the devices have been instrumental in allowing students with disabilities to be educated in regular classrooms, working and learning alongside of their nondisabled peers. Some examples of these devices are: electronic communication aids, devices that enlarge printed words on a computer screen, devices that facilitate communication for individuals with hearing impairments, prosthetic devices, Braille writers, and keyboards adapted for fist or foot use.

Assistive technology services are any services that directly assist a child with a disability to select, acquire, or use an assistive technology device. This includes evaluating the needs of the child, including a functional evaluation in the child's customary environment (§300.6). The term also includes such services as:

- purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;
- selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
- coordinating and using other therapies, interventions, or services with assistive technology devices such as those associated with existing educational and rehabilitation plans and programs;
- providing training and technical assistance for the child with a disability or, if appropriate, the child's family, and
- providing training and technical assistance for professionals (including individuals providing education or rehabilition services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of that child. (§300.6)

19. How is my child's placement determined?

Now that you, as parents, and the other members of the IEP team have looked closely at and discussed your child's educational needs, decided what special education and related services are appropriate for your child, and specified the other information required in the IEP, it will be time to consider your child's placement—*where* your child will receive his or her special education and related services. Under §300.552(a) of IDEA, the placement decision is made by a group of persons— *including the parents*—and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. The placement decision must be made in conformity with the law's least restrictive environment (LRE) provisions (discussed in Part II of this *News Digest* and found at §§300.550-300.354), which require that:

(a) to the maximum extent appropriate, children with disabilities are educated with children who are nondisabled; and

(b) special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

As was stated in Part II of this document, the law requires that the public agency ensure that a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services. This continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, and make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. (§300.551)

[T]he placement decision is made by a group of people—including the parents—and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.

These, then, are the options that the group deciding your child's placement will consider. The involvement of parents in placement decisions is new to the law with IDEA '97. The implementing regulations for IDEA '97 state that "Each public agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child" [§300.501(c)(1)]. To ensure your involvement in this critical decision, the public agency must use procedures consistent with those described under Question #15 for involving parents in IEP meetings (e.g., being notified about the meeting early enough to have the opportunity to attend, efforts to arrange a mutually agreed-upon time and location for the meeting) [§300.501(c)(2)]. The agency must also make reasonable efforts to ensure that you understand, and are able to participate in, any group discussions relating to the educational placement of your child. This includes arranging for an interpreter for you if you are deaf or if your native language is other than English. [§300.501(c)(5)]

If you cannot participate in the meeting where a placement decision will be made for your child, the public agency must use other methods to ensure your participation, including individual or conference telephone calls, or video conferencing [§300.501(c)(3)]. The law does state that a placement decision may be made by a group without your involvement as parents, if the public agency is unable to obtain your participation in the decision. However, in this case, as with IEP development, the public agency must have a record of its attempt to ensure your involvement, including detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to you and any responses received; and detailed records of visits made to your home or work and the results of those visits. [§300.501(c)(4)]

Your child's placement must be determined at least annually, must be based on his or her IEP, and must be as close as possible to his or her home [§300.552(b)]. In fact, unless your child's IEP requires some other arrangement, your son or daughter must be educated in the school he or she would attend if nondisabled [§300.552(c)]. When selecting the least restrictive environment, consideration must be given to any potential harmful effect on your child or on the quality of services that he or she needs [§300.552(d)]. And as was stated before, your child may not be removed from education in age-appropriate regular classrooms solely because he or she needs modifications made in the general curriculum [§300.552(e)].

Your child's placement must be determined at least annually, must be based on his or her IEP, and must be as close as possible to his or her home.

20. How often will my child's IEP be revised?

The law clearly makes provisions for the growth and changing needs of children. At least once a year, whether you request it or not, a meeting must be scheduled with you to review your child's IEP to determine whether the annual goals for your child are being achieved [§300.343(c)(1)]. Other aspects of your child's education will need to be considered as well, including:

- the special factors discussed under Question #13;
- the strengths of your child and your concerns for enhancing his or her education;
- the results of the most recent evaluation of your child; and
- as appropriate, the results of your child's performance on any general State- or district-wide assessment programs. [§300.346(b)]

Based upon this review, the IEP would be revised as appropriate to address the following:

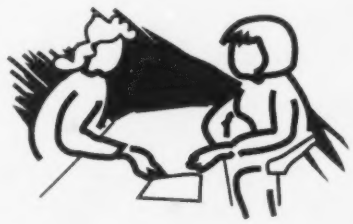
- any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;
- the results of any reevaluation of your child;
- information about your child provided to, or by, you the parents (e.g., evaluations, current classroom-based assessments and observations; and observations by teachers and related services providers);
- your child's anticipated needs; or
- other matters. [§300.343(c)]

While the law requires that this review and revision of the IEP take place at least once a year, you as parents may request a review or revision of your child's IEP at any time. If you feel that your child is not progressing toward the annual goals as he or she should, or you feel that he or she has achieved the goals and that new ones need to be written, you may contact the school and request that the IEP team review and revise your child's IEP as appropriate. Because of the law's new requirement that parents be regularly informed of their child's progress toward the annual goals and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year [§300.347(a)(7)(ii)], parents will have the ability to gauge their child's progress more closely than ever before.

21. How can I be involved after my child's IEP is developed?

It is in the best interests of everyone—the parents, the public agency, and the child with a disability—that the school and the parents maintain a good working relationship. The following are some suggestions that parents can use to develop and maintain a positive working relationship with the professionals who work with their child.

- Let your child's teacher(s) and therapists know that you are interested in playing an active role in your child's education. Plan and schedule times to talk with the professionals working with your child and, if possible, visit the classroom or program.
- Offer to explain any special equipment, medication, or medical problem your child has.
- Ask that samples of your child's work be sent home. If you have questions, make an appointment with your child's teacher(s) or therapists to discuss new strategies to meet your child's goals.
- Ask for suggestions of how you can continue, expand, and reinforce your child's educational activities at home.
- Volunteer to be a classroom or program parent. In this way, you can observe how things work in your child's program or school and how your child interacts with others.
- Let the school or program know that you may be consulted.
- Remember that both you and the school or program in which your child is enrolled want the best for your child. Working together can make this happen.



Part V: What to Do When You Don't Agree: Procedural Safeguards

The regulations implementing IDEA include an entire section (Subpart E) entitled "Procedural Safeguards." These safeguards are designed to protect the rights of parents and their child with a disability, as well as to give families and public agencies a mechanism for resolving disputes. Some of IDEA's procedural safeguards are listed in the box on the next page; many have been discussed in earlier parts of this *News Digest*. We will look at some of these areas in this section, including: the confidentiality of information; access to education records and parents' right to request that records be amended; and what parents can do if they do not agree with an educational decision made by the public agency regarding their child. This latter area will involve discussing a series of options, including mediation, due process, and filing a complaint with the State agency. New requirements for placing the child in a private school at public expense will also be discussed, although technically this is not a procedural safeguard. The disciplining of students with disabilities, a new procedural safeguard within the law, will be discussed briefly as well.

[Procedural] safeguards are designed to protect the rights of parents and their child with a disability, as well as to give families and public agencies a mechanism for resolving disputes.

Educational Records

22. Are my child's records confidential?

There are provisions under the IDEA (and other Federal laws as well) that protect the confidentiality of a child's education records. These safeguards address three issues: (a) the use of personally identifiable information; (b) who may have access to a child's records; and (c) the parents' right to request that their child's records be amended.

Personally identifiable information means information that includes: (a) the name of the child, parent, or other family member; (b) the address of the child; (c) a personal identifier number (such as the child's social security number or student number); or (d) a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty [§300.500 (b)(3)]. With a number of exceptions, you must give your consent before any personally identifiable information can be disclosed by the school system (§300.571). These exceptions are specified by your State or other participating agency's policy in keeping with §99.31 of the regulations for the Family Educational Rights and Privacy Act (FERPA), P.L. 93-380. (Regulations for the entire FERPA can be found in 34 CFR §99.1 through §99.67. IDEA's regulations on confidentiality—§300.560 through §300.577—contain several references to FERPA.) You have the right to know the policies and procedures that participating agencies in your State must follow regarding the gathering, storage, disclosure to third parties, retention, and destruction of personally identifiable information (§300.561). You can obtain this information through your district's special education director or through the State's Office of Special Education.

Access to a child's education records is frequently a concern of parents. The IDEA guarantees you as parents the right to inspect and review all education records relating to your child that the public agency collects, maintains, or uses regarding the identification, evaluation, and educational placement of your child and the provision of FAPE to your child (§§300.501 and 300.562). Should you ask to review your child's records, the public agency must respond to the request without unnecessary delay and before any meeting regarding an IEP or a due process hearing involving your child, and in no case later than 45 days after the request has been made [§300.562(a)]. You also have the right to receive a response to your reasonable requests for explanations and interpretations of the records. You may ask the agency to provide you with a copy of your child's records, and the school may charge you a reasonable fee for making the copies, as long as this fee does not effectively prevent you from exercising your right to inspect and review the records. Schools may not charge you for searching for or retrieving the records [§300.566 (b)]. You also have the right to have a representative inspect and review the records. Furthermore, you have the right to obtain from the school district or other participating agency a list of the types of education records that are collected, maintained, or used by the agency, and where these records are kept (§300.565).

Some Procedural Safeguards Under the IDEA

- the right of parents to inspect and review their child's educational records
- the right of parents to obtain an independent educational evaluation (IEE)
- the right of parents to be given written prior notice on matters regarding the identification, evaluation, or educational placement of their child, or the provision of FAPE to their child
- the right of parents or public agencies to request mediation and an impartial due process hearing on these matters (at a minimum, mediation must be available whenever an impartial due process hearing is requested)
- the right of parents to be given a full explanation of all of the procedural safeguards available under IDEA and the State complaint procedures
- the right of parents or public agencies to appeal the initial hearing decision to the State Education Agency (SEA) if the SEA did not conduct the hearing
- the right of the child to remain in his or her present educational placement, unless the parent and the public agency agree otherwise, while administrative or judicial proceedings are pending
- the right of parents or public agencies to bring a civil action in an appropriate State or Federal court to appeal a final hearing decision
- the right of parents to request reasonable attorney's fees from a court for actions or proceedings brought under the IDEA under the circumstances described in §300.513
- the right of parents to give or refuse consent before their child is evaluated or reevaluated
- the right of parents to give or refuse consent before their child is provided with special education and related services for the first time
- discipline procedures for students with disabilities

In keeping with the requirements of the FERPA, only certain individuals besides you, as parents, may have access to your child's records. These individuals may include, for example, teachers or officials of the school or State who have a legitimate educational interest in the records. The school or other participating agency is required by law to maintain a record of all parties who obtain access to a child's educational records collected, maintained, or used under Part B of IDEA (with the exception of parents and authorized employees of the agency). This record should include the name of the person who accessed the records, the date, and the purpose for which the person was authorized to use the records (§300.563).

The *right to request that records be amended* is also given to parents under the law. If you believe the information in your child's records is inaccurate or misleading or that information in the records violates your child's right to privacy or other rights, you may request that the agency that maintains this information amend it [§300.567 (a)]. The agency must then decide, within a reasonable period of time, whether to amend the information in accordance with your request [§300.567(b)]. If the agency decides to refuse to amend the information as requested, it must inform you of this decision, as well as advise you of your right to a hearing [§300.567(c)].

If you decide to challenge the school district's or other participating agency's refusal through a hearing, you have the right to present evidence showing why you feel the information in your child's records should be amended (§99.22 of FERPA). You may also, at your own expense, be assisted or represented by one or more individuals of your choice, including an attorney. The hearing must be conducted by an individual who does not have a direct interest in its outcome, and the educational agency or institution must make its decision in writing within a reasonable amount of time after the hearing (§300.570 of IDEA refers readers to §99.22 of FERPA). The decision must be based solely on the evidence presented at the hearing and must include a summary of the evidence and the reasons for the decision.

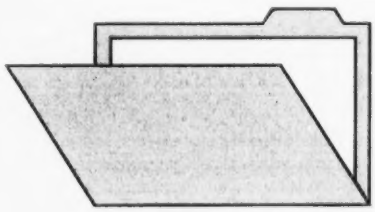
Should the result of the hearing be in your favor, the district or other participating agency must amend the information in your child's records accordingly and inform you in writing that it has done so [§300.569(a)]. If, however, the result of the hearing is that the information about your child is not inaccurate, misleading, or otherwise in violation of his or her privacy or other rights, then the agency must inform you that, as parents, you have the right to place in your child's records a statement commenting on the information or setting forth any reasons you have for disagreeing with the decision [§300.569(b)]. The district must then place your statement in the records

and keep it there as long as the record or contested portion is maintained by the agency. If the record of your child (or the contested portion) is disclosed by the agency to any party, the explanation must also be disclosed to that party. [§300.569(c)]

IDEA '97 adds an additional provision regarding educational records and the inclusion of disciplinary information in those records. A State may now require that a public agency include in the records of a child with a disability a statement of any current or previous disciplinary action taken against the child. This statement would be transmitted to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled children. [§300.576(a)] This statement may include:

- a description of any behavior engaged in by the child that required disciplinary action,
- a description of the disciplinary action taken, and
- any other information that is relevant to the safety of the child and other individuals involved with the child. [§300.576(b)]

If the State adopts such a policy and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action taken against the child [§300.576(c)].



In keeping with the requirements of the FERPA, only certain individuals besides you, as parents, may have access to your child's records.

What to Do When You Don't Agree With the Decisions of a Public Agency

23. What can the public agency do if parents don't consent to their child's initial evaluation, reevaluation, or initial provision of special education and related services?

When parents refuse consent for an initial evaluation or reevaluation of their child or the initial provision of special education and related services, the agency may continue to pursue the evaluation or the provision of services through the mediation or due process procedures specified within the law, *except* to the extent that doing so would be inconsistent with State law relating to parental consent [§300.505(b)]. Some States have policies that would prohibit the agency from overriding a parental refusal to consent. If so, the agency must follow the requirements of State law and, thus, may have no recourse but to not evaluate the child under IDEA or to not provide services to the child.

If no such State law applies with respect to parental consent, the public agency may follow Federal law and utilize either the due process or mediation procedures of IDEA to secure the initial evaluation or the initial provision of special education and related services. In this case, the public agency must notify the parents of its intended actions (i.e., to pursue mediation or a due process hearing). Parents may choose to participate in the mediation process, which is voluntary, and they have rights with respect to due process hearings (both mediation and due process are discussed further below).

The only exception to the above requirements for consent is a specific provision in the case of parents who fail to respond to a request for a reevaluation of their child. In this instance, informed parent consent does *not* need to be obtained if the agency can demonstrate that it has taken reasonable measures to obtain that consent and the child's parent has failed to respond [§300.505(c)]. (Note that this provision applies only in the case of reevaluation and only when parents fail to respond, as opposed to expressly refusing consent.) The regulations describe "reasonable measures" as being consistent with provisions at §300.345(d), which means that the public agency must have a record of its attempts to secure parents' consent to the reevaluation of their child, such as:

- detailed records of telephone calls made or attempted and the results of those calls;
- copies of correspondence sent to the parents and any responses received; and
- detailed records of visits made to the parent's home or place of employment and the results of those visits.

24. What can I do if, at some point in time, I don't agree with decisions the school makes concerning my child?

There are several different procedures that you might want to use when you are not in agreement with the decisions made by the public agency with regard to your child's identification, evaluation, educational placement, or the provision of FAPE. Five commonly used procedures are listed below. You may want to use one or more of these approaches; some may be more appropriate than others

at different times and for different reasons. You may also find it useful to involve an advocate in some of these approaches. An advocate can help you understand your rights and responsibilities fully, as well as those of the public agency, and can assist in discussions concerning whatever differences exist between you and the public agency. [To find out more about advocates in your area, you may wish to contact a local disability group or parent group. You may also contact NICHCY for the name and telephone number of the Parent Training and Information (PTI) center in your State.]

(1) *Discussion or conference with school staff.* Staff may include teachers, counselors, the principal, the director of special education, and even the superintendent. Talking openly and honestly with these involved professionals may be an effective means of addressing and resolving a disagreement.

(2) *An IEP review.* You may request an IEP review at any time you feel that the services your child is already receiving are inappropriate or insufficient, or if he or she is not making progress. If your child has received an independent educational evaluation, the IEP review conference would be an appropriate time to consider the results of that evaluation.

(3) *Mediation.* IDEA '97 establishes mediation as a voluntary process that may be used in resolving disputes between public agencies and the parents of a child with a disability (§300.506). Mediation is a dispute settlement process in which a qualified and impartial third person (called a mediator) tries to negotiate a solution or compromise to the dispute. The mediator will listen to the parties and encourage them to make concessions or compromises. IDEA '97 requires that agreements reached in mediation be put in writing. More is said about mediation under Question #25.

(4) *Due process hearing.* You may request a due process hearing if you do not agree with your child's identification, evaluation, or educational placement, or any aspect related to the provision of FAPE to your child (§300.507). An impartial third party, called a hearing officer, will listen to the evidence that you and the public agency present and will issue a decision that contains the relevant facts and the legal basis for the decision. Due process hearings are discussed more fully under Question #26.

IDEA '97 establishes mediation as a voluntary process that may be used in resolving disputes between public agencies and the parents of a child with a disability.

(5) *Complaint resolution procedures.* Any individual or organization may file a complaint alleging that the State or other participating agency has violated a requirement of IDEA. Complaints must be written and signed and must contain a statement that a public agency has violated a requirement of Part B of IDEA and the facts upon which the statement is based. More is said about these procedures under Question #27.

In addition to these methods of resolving disputes, many parents may also decide to remove their child from the public school and place him or her in a private school. If the public school has failed to make FAPE available to the child, the public school may be required to pay for the costs of the private school education. This issue is discussed under Question #28.

25. What is mediation?

As was said above, mediation is a voluntary process that may be used to resolve disputes between school systems and the parents of a child with a disability. Under IDEA '97, States must now establish procedures to ensure that a mediation process is available, at a minimum, whenever a due process hearing is requested under §300.507 or under the discipline provisions of the law (§§300.520-300.528). The law requires that the mediation process meet certain, specific conditions, as follows:

- Mediation must be voluntary on the part of both parties.
- Mediation may not be used to deny or delay a parent's right to a due process hearing or to deny any other right under Part B of IDEA.
- Mediation must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
- If a mediator is not selected on a random (e.g., a rotation) basis from the list of mediators, then both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate.
- The State must bear the cost of the mediation process.
- Each session in the mediation process must be scheduled in a timely manner and held in a location convenient to the parties in the dispute.

- An agreement reached by the parties must be set forth in a written mediation agreement.
- Discussions that occur during the mediation process must be confidential. They may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be required to sign a confidentiality pledge prior to the beginning of the mediation. [§300.506(b)]

Some parents may choose not to use mediation, and an LEA or a State agency may establish procedures to require the parents to meet with a disinterested party who would explain the benefits of the process and encourage parents to use the process. This disinterested party would be under contract with a Parent Training and Information (PTI) center or a community parent resource center in the State, or an appropriate alternative dispute resolution organization or agency. [§300.506(d)]

As a new addition to the law, mediation is seen as having great potential for resolving disputes between school systems and parents. As the Committee on Labor and Human Resources (1997) states in the report it sent to Congress to explain the IDEA '97: "The committee is aware that, in States where mediation is being used, litigation has been reduced, and parents and schools have resolved their differences amicably, making decisions with the child's best interests in mind" (pp. 26-27).

26. What is a due process hearing?

You, as parents, have the right to initiate a due process hearing on any matter related to your child's identification, evaluation, or educational placement, or any aspect related to the provision of FAPE to your child (§300.507). As mentioned above, a due process hearing involves an impartial third party—called a hearing officer—who hears the evidence and issues a decision based upon that evidence and the requirements of the IDEA. This person may not be an employee of the State agency or LEA involved in the education or care of your child, nor can this person have a personal or professional interest that would conflict with his or her objectivity in the hearing [§300.508(a)(1)-(2)]. It is important to note that just because the public agency pays this person to serve as a hearing officer, he or she is not considered to be an employee of the agency [§300.508(c)].

Under IDEA '97, when you as parents request a due process hearing, you (or your attorney) are also required to provide the public agency with notice (which is to remain confidential) that you are requesting such a hearing. The notice must include:

- the name of your child;
- the address of your child's residence;
- the name of the school your child is attending;
- a description of the nature of the problem of your child, including facts relating to the problem; and
- a proposed resolution of the problem to the extent known and available to you, as parents, at the time. [§300.507(c)]

However, a public agency may not deny or delay your right to a due process hearing for failure to provide the notice described above [§300.507(c)(4)].

The due process hearing must be conducted by the SEA or the public agency directly responsible for your child's education, as specified by the State. When a due process hearing is initiated, the public agency must inform you of the availability of mediation as a means to resolve the dispute in question [§300.507(a)(2)]. The agency must also tell you of any free or low-cost legal (and other relevant) services available in the area, if you request such information [§300.507(a)(3)].

The right to request a due process hearing, however, is not reserved solely for parents. The public agency also has the right to initiate a mediation process or a due process hearing if parents refuse to give consent to the initial evaluation or reevaluation or the initial provision of special education and related services to their child, unless doing so would be inconsistent with State law regarding parental consent [§§300.506(a) and 300.507(a)].

Under IDEA '97, when you as parents request a due process hearing, you (or your attorney) are also required to provide the public agency with notice...that you are requesting such a hearing.

Any party involved in the due process hearing—including you as parents—has the right to:

- be accompanied and advised by counsel (i.e., an attorney) or by individuals with special knowledge or training with respect to the problems of children with disabilities;
- present evidence and confront, cross-examine, and compel the attendance of witnesses;
- prohibit evidence from being introduced at the hearing that has not been disclosed to that party at least five business days before the hearing;
- obtain a written or, at the option of you as parents, an electronic verbatim record of the hearing; and
- obtain written or, at the option of you as parents, electronic findings of fact and decisions. (§300.509)

At least five business days prior to the hearing, each party must disclose to all other parties all evaluations of your child completed by that date and recommendations based on the offering party's evaluations (i.e., the party that has requested the due process hearing) that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party. [§300.509(b)]

As parents, you have certain additional rights at a due process hearing, as follows:

- You have the right to have your child present at the hearing.
- If the hearing will involve oral arguments, the hearing must be conducted at a time and place that is reasonably convenient to you and your child.
- You have the right to open the hearing to the public.
- The record of the hearing and the findings of fact and decisions must be provided at no cost to you. [§§300.509(c) and 300.511(d)]

At [a due process] hearing, the arguments and evidence of both you and the public agency are presented before the impartial hearing officer, who will make a decision on the matters at issue.

At the hearing, the arguments and evidence of both you and the public agency are presented before the impartial hearing officer, who will make a decision on the matters at issue. The due process hearing must be completed and a copy of the decision mailed to you and the public agency within 45 days of your request for the hearing (§300.511); however, the hearing officer may grant a specific extension of time at the request of either party involved in the due process procedure. The decision is considered final, unless one of the parties involved in the hearing appeals the decision to the SEA (§300.510). Appeal to the SEA is available only if the SEA did not conduct the hearing.

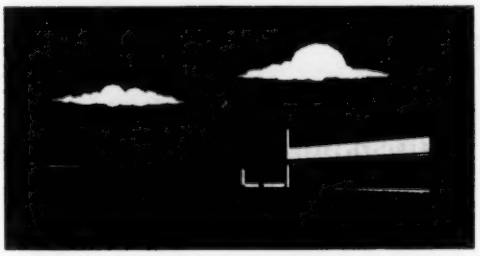
If the hearing decision is appealed, the SEA must conduct an impartial review of the hearing, which involves examining the entire hearing record, ensuring that the procedures at the hearing were consistent with the requirements of due process, and seeking additional information, if necessary. If the reviewing official wishes to, he or she can afford both parties the opportunity for oral or written arguments, or both. The hearing officer must then make an independent decision and give a copy of the written or, at your option, electronic findings of fact and decisions to the parties. The SEA must ensure that this entire process—from the initial receipt of the request for an impartial review to the rendering of a final decision and the mailing of that decision to each party—is completed in not longer than 30 days. The reviewing officer may grant specific extensions of time beyond the 30 days at the request of either party. [§300.511(b)]

A parent or a public agency who disagrees with an initial hearing decision for which no SEA-level appeal is available, or any party aggrieved by the findings and decisions under the impartial review described above, has the right to bring a civil suit with respect to the complaint presented as part of the due process hearing (§300.512). It is important to realize, however, that civil actions can become quite costly and are certainly frustrating and time-consuming.

27. What should I do if I want to file a complaint?

As was said above, any individual or organization may file a complaint alleging that the State or other participating agency has violated a requirement of the IDEA. Complaints must be written and signed and must contain a statement that a public agency has violated a requirement of Part B of IDEA or its implementing regulations and the facts upon which the statement is based. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received, unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint was received (§300.662). Because the complaint resolution process tends to be less intimidating than a due process hearing, many parents may select this approach (rather than due process) to resolve disputes. The SEA is obligated to resolve such a complaint within 60 calendar days from the date of receipt, unless exceptional circumstances exist with respect to the complaint. The requirements governing IDEA-related complaints are found in §§300.660 through 300.662.

An individual wishing to file a complaint must do so by writing directly to his or her SEA or, in some States, the SEA provides for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint. In either instance, the SEA must conduct an on-site investigation, if it determines such an investigation to be necessary. The complainant also must be given the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. The SEA must



review all relevant information and make an independent determination as to whether the public agency has violated or is violating a requirement of the law. The SEA must then issue a written decision to the complainant that addresses each of the allegations in the complaint and contains the findings of fact and conclusions, as well as the reasons for the SEA's final decision.

To find out more about your State's complaint procedures, contact the Director of Special Education at your SEA and request information about these procedures. Additional clarification may also be available about how mediation, the due process procedure, and the State complaint process operate as distinct and separate remedies. You may want to seek advice from the PTI center or the Protection and Advocacy (P&A) Agency in your State.

28. What do I do if I want to put my child in a private school?

Parents always may remove their child from the public school and enroll him or her in a private school at their own expense. The law does not require an LEA to pay for the cost of education, including special education and related services, of a child at a private school or facility if that agency made FAPE available to the child and the parents chose to place the child in the private school or facility [§300.403(a)]. However, disagreements between a parent and a public agency regarding the availability of a program appropriate for the child may arise. As was discussed above, parents and public agencies have many means of resolving such disputes, including meetings and conferences and more formal proceedings such as mediation or due process.

If, as parents, you decide to place your child in a private school and you want the public agency to pay for the cost of the private school education, certain provisions of law come into play. One relates to the question of whether or not the public agency made FAPE available to your child, which will be a deciding factor in whether or not the agency must reimburse you for the cost of the private school education. If you enroll your child in a private preschool, elementary, or secondary school without the consent of or referral by the agency, a court or hearing officer may require the agency to reimburse you for the cost of that enrollment if the court or hearing officer finds (a) that the public agency had not made FAPE available to your child in a timely manner prior to the private school enrollment, and (b) that the private placement is appropriate. Another important provision is that the cost of this reimbursement may be reduced or denied for a number of reasons, including if:

- at the most recent IEP meeting that you attended prior to removing your child from the public school, you did not inform the IEP team that you were rejecting the placement proposed by the public agency, including stating your concerns and your intent to enroll your child in a private school at public expense; or
- at least ten business days (including any holidays that occur on a business day) prior to removing your child from the public school, you did not give written notice to the public agency of the information described above. [§300.403(d)(1)]

The cost of reimbursement may also be reduced or denied:

- if, prior to your removal of your child from the public school, the agency informed you of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make your son or daughter available for the evaluation; or
- upon a judicial finding of unreasonableness with respect to actions taken by you, as parents. [§300.403(d)(2)-(3)]

There are exceptions to these provisions, of course. The cost of reimbursement may not be reduced or denied for failure to provide the notice above if:

- you are illiterate and cannot write in English;
- providing the notice as required by law would likely result in physical or serious emotional harm to your child;
- the school prevented you from providing the notice; or
- you had not received notice that you were required to provide the public agency with notification of your intentions, as described above.

Thus, you may be able to secure reimbursement for the cost of your child's private school enrollment, given the above conditions (i.e., a court or hearing officer finds that the public agency did not make FAPE available to your child and that the private school placement is appropriate; you as parents notified the IEP team or the public agency of your intentions to remove your son or daughter from the public school and place him or her in a private school at public expense). In any event, parents always have the option of placing the child in a private school and paying for this placement themselves.

IDEA '97 has added explicit new provisions regarding the disciplining of students with disabilities...The provisions... should be read in their entirety by individuals concerned with how children with disabilities may be disciplined in educational settings.

29. If my child breaks a school rule, how may the school discipline him or her?

IDEA '97 has added explicit new provisions regarding the disciplining of students with disabilities (§§300.520-300.529). These provisions address students with disabilities who:

- violate a school rule or code of conduct that is subject to disciplinary action;
- carry a weapon to (or possess a weapon at) school or a school function under the jurisdiction of the LEA or the SEA;
- knowingly possess or use illegal drugs or sell or solicit the sale of a controlled substance while at school or a school function under the jurisdiction of the LEA or the SEA; and
- are substantially likely to injure themselves or others if left in their current educational placement.

The provisions found at §§300.520-300.529 should be read in their entirety by individuals concerned with how children with disabilities may be disciplined in educational settings. The new provisions are intended to protect the rights of children with disabilities and their parents, while at the same time address the concerns of school administrators and teachers regarding school safety and order. They are also intended to help schools respond appropriately to a child's behavior and promote the use of appropriate behavioral interventions to prevent troubling behavior from recurring.

Due to the complexity of the new discipline provisions, however, we will not discuss them further in this *News Digest*. If you, as parents, are concerned about your child's behavior at school, we urge you to work with the IEP team to address his or her need for positive behavioral interventions. You may also need to learn more about the law's new disciplinary requirements and how school systems are working to address the challenging behaviors of students with and without disabilities. To do so, please contact NICHCY directly at 1-800-695-0285 or e-mail us (nichcy@aed.org). We would be pleased to provide you with information about the law and about positive behavioral supports.

Law and Regulations

As was mentioned at the beginning of this *News Digest*, two of the best resources parents can have in regard to the educational rights of their child with a disability are copies of the law itself and the Federal regulations written for the law. Refer to Part I of this document for information about where and how to obtain these resources.

Information about how your State implements the law is also useful; State policies are generally available by contacting your school district or State's Director of Special Education.

NICHCY

Contact NICHCY:

- for other materials about the law and how to access special education services;
- for a *Publications Catalog;*
- to talk to an Information Specialist about your question(s), or
- to locate support groups in your area.

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Attachment A: IDEA's Definition of a "Child with a Disability"

The IDEA provides a definition of a "child with a disability," which is presented in its entirety below. The law also lists 13 separate categories of disability under which children may be eligible for special education and related services. These definitions are also presented verbatim, as found in §300.7(c)(1)-(13).

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§300.7 Child with a disability.

"(a) *General.* (1) As used in this part, the term *child with a disability* means a child evaluated in accordance with §§ 300.530-300.536 as having mental retardation, a hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance (hereafter referred to as emotional disturbance), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

"(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§ 300.530-300.536, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a *child with a disability* under this part.

"(ii) If, consistent with § 300.26(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a *child with a disability* under paragraph (a)(1) of this section.

"(b) *Children aged 3 through 9 experiencing developmental delays.* The term *child with a disability* for children aged 3 through 9 may, at the discretion of the State and LEA and in accordance with § 300.313, include a child—

"(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and

"(2) Who, by reason thereof, needs special education and related services.

"(c) *Definitions of disability terms.* The terms used in this definition are defined as follows:

"(1)(i) *Autism* means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (b)(4) of this section.

"(ii) A child who manifests the characteristics of "autism" after age 3 could be diagnosed as having "autism" if the criteria in paragraph (c)(1)(i) of this section are satisfied.

"(2) *Deaf-blindness* means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

"(3) *Deafness* means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

"(4) *Emotional disturbance* is defined as follows:

"(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

"(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

"(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

"(C) Inappropriate types of behavior or feelings under normal circumstances.

"(D) A general pervasive mood of unhappiness or depression.

"(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

"(ii) The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

"(5) *Hearing impairment* means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

"(6) *Mental retardation* means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

"(7) *Multiple disabilities* means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness.

"(8) *Orthopedic impairment* means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

"(9) *Other health impairment* means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that—

"(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, and sickle cell anemia; and

"(ii) Adversely affects a child's educational performance.

"(10) *Specific learning disability* is defined as follows:

"(i) *General.* The term means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

"(ii) *Disorders not included.* The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

"(11) *Speech or language impairment* means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

"(12) *Traumatic brain injury* means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

"(13) *Visual impairment including blindness* means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness."

(Authority: 20 U.S.C. 1401(3)(A) and (B); 1401(26))

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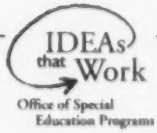

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